

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AGERE SYSTEMS INC.,)
)
)
 Plaintiffs,)
)
)
 v.) Civil Action No.
)
)
BROADCOM CORPORATION,)
)
)
 Defendant.)
)
)

COMPLAINT

Plaintiff, Agere Systems Inc. (“Agere”), brings this action for patent infringement against the defendant, Broadcom Corporation (“Broadcom”), and alleges as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §1 et seq., alleging infringement of United States Patent Nos. 4,941,154, 5,329,551, 5,420,599, 6,011,432, 6,175,550, and 6,563,786.
2. This Court has exclusive subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).
3. This Court has personal jurisdiction over the defendant because Broadcom conducts business within this District and because Broadcom maintains an office in this District.
4. Venue is proper under 28 U.S.C. §1391(c) and §1400(b).

PARTIES

5. Agere Systems Inc. is a Delaware corporation with its principal place of business at 1110 American Parkway N.E., Allentown, Pennsylvania 18109.

6. On information and belief, Broadcom is a California corporation with its principal place of business at 16215 Alton Parkway, Irvine, California 92619.

7. On information and belief, Broadcom designs, develops, and supplies products for the broadband communications market, including, products used in digital cable and satellite set-top boxes, cable and DSL modems, home and wireless networking, and cellular and terrestrial wireless communications.

THE PATENTS

8. U.S. Patent No. 4,941,154 ("the '154 patent") entitled "Trellis Coding Method and Arrangement for Fractional Bit Rates," duly and legally issued on July 10, 1990, to Lee-Fang Wei. A copy of the '154 patent is attached hereto as Exhibit A.

9. Agere is the assignee of the '154 patent, with the right to recover for all past and future infringement.

10. The '154 patent is valid and enforceable.

11. U.S. Patent No. 5,329,551 ("the '551 patent") entitled "Overlapped Multilevel Codes," duly and legally issued on July 12, 1994, to Lee-Fang Wei. A copy of the '551 patent is attached hereto as Exhibit B.

12. Agere is the assignee of the ‘551 patent, with the right to recover for all past and future infringement.

13. The ‘551 patent is valid and enforceable.

14. U.S. Patent No. 5,420,599 (“the ‘599 patent”) entitled “Antenna Apparatus,” duly and legally issued on May 30, 1995, to Nedim Erkocevic. A copy of the ‘599 patent is attached hereto as Exhibit C.

15. Agere is the assignee of the ‘599 patent, with the right to recover for all past and future infringement.

16. The ‘599 patent is valid and enforceable.

17. U.S. Patent No. 6,011,432 (“the ‘432 patent”) entitled “Continuous Tuning of Switched Capacitor Circuits Using DC-Isolated Tuning Elements,” duly and legally issued on January 4, 2000, to Roger A. Fratti and Douglas D. Lopata. A copy of the ‘432 patent is attached hereto as Exhibit D.

18. Agere is the assignee of the ‘432 patent, with the right to recover for all past and future infringement.

19. The ‘432 patent is valid and enforceable.

20. U.S. Patent No. 6,175,550 (“the ‘550 patent”) entitled “Orthogonal Frequency Division Multiplexing System with Dynamically Scalable Operating Parameters and Method Thereof,” duly and legally issued on January 16, 2001, to Richard D. J. van Nee. A copy of the ‘550 patent is attached hereto as Exhibit E.

21. Agere is the assignee of the '550 patent, with the right to recover for all past and future infringement.

22. The '550 patent is valid and enforceable.

23. U.S. Patent No. 6,563,786 ("the '786 patent") entitled "Orthogonal Frequency Division Multiplexing System with Selectable Rate," duly and legally issued on May 13, 2003, to Richard van Nee. A copy of the '786 patent is attached hereto as Exhibit F.

24. Agere is the assignee of the '786 patent, with the right to recover for all past and future infringement.

25. The '786 patent is valid and enforceable.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 4,941,154

26. Agere repeats and realleges the allegations in paragraphs 1-25 as though fully set forth herein.

27. Broadcom has infringed and induced others to infringe the '154 patent, by among other things, making, using, selling, and/or offering to sell products that incorporate the inventions of the '154 patent.

28. Broadcom has caused and will continue to cause Agere substantial damage and irreparable injury by virtue of its continuing infringement of the '154 patent.

29. Agere will suffer further damage and irreparable injury unless and until Broadcom is enjoined by this Court from continuing such infringement.

30. Upon information and belief, Broadcom's infringement of the '154 patent is willful and deliberate.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 5,329,551

31. Agere repeats and realleges the allegations in paragraphs 1-25 as though fully set forth herein.

32. Broadcom has infringed and induced others to infringe the '551 patent, by among other things, making, using, selling, and/or offering to sell products that incorporate the inventions of the '551 patent.

33. Broadcom has caused and will continue to cause Agere substantial damage and irreparable injury by virtue of its continuing infringement of the '551 patent.

34. Agere will suffer further damage and irreparable injury unless and until Broadcom is enjoined by this Court from continuing such infringement.

35. Upon information and belief, Broadcom's infringement of the '551 patent is willful and deliberate.

COUNT III

INFRINGEMENT OF U.S. PATENT NO. 5,420,599

36. Agere repeats and realleges the allegations in paragraphs 1-25 as though fully set forth herein.

37. Broadcom has infringed and induced others to infringe the '599 patent, by among other things, making, using, selling, and/or offering to sell products that incorporate the inventions of the '599 patent.

38. Broadcom has caused and will continue to cause Agere substantial damage and irreparable injury by virtue of its continuing infringement of the '599 patent.

39. Agere will suffer further damage and irreparable injury unless and until Broadcom is enjoined by this Court from continuing such infringement.

40. Upon information and belief, Broadcom's infringement of the '599 patent is willful and deliberate.

COUNT IV

INFRINGEMENT OF U.S. PATENT NO. 6,011,432

41. Agere repeats and realleges the allegations in paragraphs 1-25 as though fully set forth herein.

42. Broadcom has infringed and induced others to infringe the '432 patent, by among other things, making, using, selling, and/or offering to sell products that incorporate the inventions of the '432 patent.

43. Broadcom has caused and will continue to cause Agere substantial damage and irreparable injury by virtue of its continuing infringement of the '432 patent.

44. Agere will suffer further damage and irreparable injury unless and until Broadcom is enjoined by this Court from continuing such infringement.

45. Upon information and belief, Broadcom's infringement of the '432 patent is willful and deliberate.

COUNT V

INFRINGEMENT OF U.S. PATENT NO. 6,175,550

46. Agere repeats and realleges the allegations in paragraphs 1-25 as though fully set forth herein.

47. Broadcom has infringed and induced others to infringe the '550 patent, by among other things, making, using, selling, and/or offering to sell products that incorporate the inventions of the '550 patent.

48. Broadcom has caused and will continue to cause Agere substantial damage and irreparable injury by virtue of its continuing infringement of the '550 patent.

49. Agere will suffer further damage and irreparable injury unless and until Broadcom is enjoined by this Court from continuing such infringement.

50. Upon information and belief, Broadcom's infringement of the '550 patent is willful and deliberate.

COUNT VI

INFRINGEMENT OF U.S. PATENT NO. 6,563,786

51. Agere repeats and realleges the allegations in paragraphs 1-25 as though fully set forth herein.

52. Broadcom has infringed and induced others to infringe the '786 patent, by among other things, making, using, selling, and/or offering to sell products that incorporate the inventions of the '786 patent.

53. Broadcom has caused and will continue to cause Agere substantial damage and irreparable injury by virtue of its continuing infringement of the '786 patent.

54. Agere will suffer further damage and irreparable injury unless and until Broadcom is enjoined by this Court from continuing such infringement.

55. Upon information and belief, Broadcom's infringement of the '786 patent is willful and deliberate.

COUNT VII

EXCEPTIONAL CASE

56. Agere repeats and realleges the allegations in paragraphs 1-55 as though fully set forth herein.

57. Broadcom has committed acts and will continue to commit acts that make this case exceptional under 35 U.S.C. §285.

WHEREFORE, Agere prays for the entry of judgment as follows:

A. Declaring that Broadcom has infringed the '154, '551, '599, '432, '550 and '786 patents;

B. Permanently enjoining and restraining Broadcom, its officers, directors, agents, servants, employees, licensees, successors, assigns, those in active concert and participation with them, and all persons acting on their behalf or within their control from:

1. Further acts of infringing the '154, '551, '599, '432, '550 and '786 patents, including, but not limited to, making, using, selling, offering to sell, importing, exporting, advertising or otherwise using, contributing to the use of, or inducing the use of all products found to infringe the '154, '551, '599, '432, '550 and '786 patents.

2. Transferring, moving, or otherwise disposing of all products found to infringe the '154, '551, '599, '432, '550 and '786 patents.

C. Requiring Broadcom to:

1. Send a copy of any decision in this case in favor of Agere to each person or entity to whom Broadcom has sold, or otherwise distributed all products found to infringe the '154, '551, '599, '432, '550 and '786 patents, and informing such persons or entities of the judgment and that the sale or solicited commercial transaction was wrongful.

2. Take all necessary steps within their power to recall and collect from all persons and entities any and all products found to infringe the '154, '551, '599, '432, '550 and '786 patents, that were made, sold, or otherwise distributed by Broadcom or anyone acting on their behalf.

3. File with the Court and serve upon Agere, within 30 days after entry of final judgment in this case, a report in writing and subscribed under oath setting forth in detail the form and manner in which Broadcom has complied with the Court's orders as prayed for.

D. Awarding Agere its patent infringement damages and pre-judgment interest pursuant to 35 U.S.C. §284;

E. Awarding Agere treble damages for willful infringement pursuant to 35 U.S.C. § 284;

F. Declaring this case exceptional and awarding Agere its reasonable costs and attorneys fees pursuant to 35 U.S.C. § 285; and

G. Granting Agere such other and further relief as justice and equity may require.

JURY DEMAND

Agere requests a jury trial.

DATED: May 16, 2003

Respectfully Submitted,



Paul Kennedy (#39291)
Vincent V. Carissimi (#42227)
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
(215) 981-4000

John M. Desmarais
KIRKLAND & ELLIS
Citigroup Center
153 East 53rd Street
New York, New York 10022-4611
(312) 446-4800

David K. Callahan
Christian Chadd Taylor
William E. Devitt
KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, Illinois 60601
(312) 861-2000

Attorneys for Agere Systems Inc.